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PATENT

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OFFICE OF PETITIONS

Group Art Unit: 2815

Examiner: J. Nguyen

Atty. Dkt. No. 01701.00086

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:

Hiroyuki Nitta et al.

Serial No.: 09/883,210

Filed: June 19, 2001

Semiconductor Device Having A Wiring Layer Of Damascene Structure And Method

For Manufacturing The Same

Inquiry Under 37 CFR 1.137 b

Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450

Attn: Office of Petitions

The undersigned certifies that this paper of 13 pages (1 page age attachment) is being faxed to 703 872 9306.

Christopher R. Glembocki Reg. No. 38,800

Sir:

For:

Applicants submitted the attached Request to Withdraw the Holding of Abandonment and Petition to Revive Unintentional. Applicants received a decision (attached) on the Request to Withdraw the Holding of Abandonment. However, Applicants have not received a response on the Petition to Revive Unintentional.

Applicants have been charged the fee for the Petition to Revive (\$1300) on February 3, 2003, but have not received the decision.

Please inform the undersigned when a decision on the Petition will be mailed.

Please charge any fee associated with the filing of this paper to our Deposit Account No. 19-0733.

BANNER & WITCOFF, LTD. 1001 G Street, N.W., 11th Floor Washington, D.C. 20001 (202) 824-3000

Dated:

May 17, 2004

Respectfully submitted

Christopher R. Glembocki Registration No. 38,800

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Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

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BANNER & WITCOFF Noted

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In re Application of Hiroyuki Nitta et al. Application No. 09/883,210 Filed: June 19, 2001 Attorney Docket No. 01701.00086

DECISION ON PETITION

This is a decision on the petition filed January 30, 2003, requesting that the holding of abandonment in the above-identified application be withdrawn, or in the alternative, to revive the application under 37 C.F.R. 1.137(b)¹.

The petition to withdraw the holding of abandonment is DENIED.

A restriction requirement and an election of species requirement were mailed February 7, 2002, setting a one-month shortened statutory period for filing a response. On March 5, 2002, applicant responded to the restriction requirement, but failed to elect a species for examination purposes. The March 5, 2002 response was held non-responsive and another Office action was mailed March 22, 2002, setting a one month shorten statutory period for filing a response. In the absence of a response, the application was held abandoned and a Notice of Abandonment was mailed January 17, 2003.

Petitioner asserts that a response was timely filed by facsimile transmission on April 19, 2002 together with a preliminary amendment. To support the assertion, petitioner submitted 1) a copy of a response entitled "Response to Election Requirement" which bears a Certificate of Transmission under 37 C.F.R. § 1.8(a) dated April 19, 2002, 2) a

¹This decision addresses the petition to withdraw the holding of abandonment only. A decision on the petition under 37 C.F.R. § 1.137(b) will be addressed by the Deputy Commissioner for Patent Examination Policy.

Application No. 09/883,210 On Petition

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copy of a paper entitled "Amendment" which bears a Certificate of Transmission under 37 C.F.R. § 1.8(a) dated April 19, 2002, 3) a copy of the sending unit's report confirming successful transmission of the Amendment on April 19, 2002.

The file record does not include the originally submitted papers.

A review of the record does not show evidence that the election was in fact sent by way of facsimile transmission with a report of successful transmission thereof. The copy of the sending unit's report confirming successful transmission of the Amendment on April 19, 2002 does not support timely facsimile transmission of the "Response to Election Requirement." Further, the sending unit's report shows transmission of three pages, not enough pages to support sending of the election also.

The petition does not satisfy the conditions for accepting a response filed using a certificate of transmission under 37 C.F.R. § 1.8(a) but lost after being received by the USPTO. Accordingly, the petition is denied.

The application filed is being forwarded to the Deputy Commissioner for Patent Examination Policy, Office of Petitions, for consideration of the Petition to Revive Unintentional.

Sharon A. Gibson

Technology Center 2800 Director Semiconductors, Electrical and Optical

Systems and Components